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Sistem Lingkaran Lebuhraya Kajang Sdn Bhd v Inch Kenneth Kajang Rubber Ltd & Anor

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NOS B-01(IM)-146 OF 2009, B-01(IM)-245 OF 2009 AND B-01(IM)-83 OF 2010

KN SEGARA, RAMLY ALI AND AZHAR MA'AH JJCA

1 SEPTEMBER 2010

Civil Procedure — Intervention — Application for — Intervener application in land reference proceedings — Land acquired for construction of highway project — Project concession holder not participating in land acquisition enquiry and not filing any objection in Form N — Whether concession holder may intervene in land reference proceedings to support quantum of compensation awarded — Whether attempt to intervene circumvented provisions of Land Acquisition Act 1960 — Whether abuse of process — Whether intervention ought to be allowed — Rules of the High Court 1980 O 15 r 6(2)(b)

Land Law — Acquisition of land — Parties — Intervener application in land reference proceedings — Land acquired for construction of highway project — Project concession holder not participating in land acquisition enquiry and not filing any objection in Form N — Whether concession holder may intervene in land reference proceedings to support quantum of compensation awarded — Whether attempt to intervene circumvented provisions of Land Acquisition Act 1960 — Whether abuse of process — Whether intervention ought to be allowed — Rules of the High Court 1980 O 15 r 6(2)(b)

The appellant was appointed by the government as a concessionaire to construct of the SILK Highway under a privatisation agreement. Certain scheduled lands were acquired for the SILK Highway under the s 3 of the Land Acquisition Act 1960 ('the Act') on behalf of Lembaga Lebuhraya Malaysia ('LLM'). The appellant did not participate at the enquiry under s 12 of the Act. The appellant did not dispute the award made by the land administrator and did not file any objection in Form N in relation to the quantum awarded to the persons interested in the scheduled lands. The appellant however applied to intervene in the subsequent land reference cases at the High Court to defend the award of compensation made by the land administrator. The High Court dismissed the appellant's application to intervene on the ground the application for leave to intervene was without merits. Hence this appeal.

Held, dismissing the three appeals with costs:

(1) The appellant did not fall within that category of person envisaged in

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O 15 r 6(2)(b)(i) of the Rules of the High Court 1980 ('RHC'). There were no 'matters in dispute' that may be 'effectively and completely determined and adjudicated upon' which necessitated the appellant to be a party in the proceedings at the High Court (see para 6).

(2) The appellant's liability to pay the compensation arose out of the privatisation agreement and not under the Act either upon the assessment by the land administrator at the conclusion of the enquiry under s 12 or at the conclusion of any proceeding in respect of an objection under s 37 in the court, by a determination under s 47 of the Act. The appellant was neither making any claim to compensation nor was entitled to any compensation under the Act. The appellant had also not made any objection in Form N. Therefore, the appellant's application to intervene, made more than four years after the land administrator had referred to court the land owners' objection to the award of compensation was entirely bereft of any merits (see para 9).

(3) The appellant's application under O 15 r 6 (2)(b) of the RHC to be made a party was inappropriate. It amounted to an abuse of the process of the court and an attempt to circumvent the clear and unambiguous provisions of the Act as regards to the manner and circumstances in which 'persons interested' under the Act are to participate in the proceedings either before the land administrator at an enquiry or, in the court. Filing of Form N is the most appropriate and the only mode available under the Act to any person interested under the Act to become a party in a land reference at the High Court relating to an objection to the amount of compensation (see para 16).

[**Bahasa Malaysia summary**
Perayu dilantik oleh kerajaan sebagai pemegang konsesi untuk membina Lebuhraya SILK di bawah perjanjian penswastaan. Tanah dijadualkan tertentu diperolehi untuk Lebuhraya SILK di bawah s 3 Akta Pemerolehan Tanah 1960 ('Akta') bagi pihak Lembaga Lebuhraya Malaysia ('LLM'). Perayu tidak mengambil bahagian semasa siastan di bawah s 12 Akta. Perayu tidak mempertikaikan award yang diberikan oleh pentadbir tanah dan tidak memfailkan apa-apa bantahan dalam Borang N berkaitan kuantum yang diawardkan kepada orang-orang yang berminat di dalam tanah-tanah dijadualkan tersebut. Perayu walau bagaimanapun memohon untuk campur tangan dalam kes-kes rujukan tanah selanjutnya di Mahkamah Tinggi untuk membela award pampasan yang dibuat oleh pentadbir tanah. Mahkamah Tinggi menolak permohonan perayu untuk campur tangan atas alasan permohonan untuk keizinan untuk campur tangan tersebut adalah tanpa merit. Maka rayuan ini.

Diputuskan, menolak ketiga-tiga rayuan dengan kos:

(1) Perayu tidak terangkum dalam kategori orang-orang yang dibayangkan

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di dalam A 15 k 6 (2)(b) Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT'). Tidak terdapat 'matters in dispute' yang akan 'effectively and completely determined and adjudicated upon' yang memerlukan perayu menjadi pihak di dalam prosiding di Mahkamah Tinggi (lihat perenggan 6).

(2) Liabiliti perayu untuk membayar pampasan berbangkit daripada perjanjian penswastaan dan bukan di bawah Akta juga atas penaksiran oleh pentadbir tanah pada akhir siasatan di bawah s 12 atau pada akhir apa-apa prosiding berkaitan bantahan di bawah s 37 dalam mahkamah, dengan penentuan di bawah s 47 Akta. Perayu tidak membuat apa-apa tuntutan untuk pampasan dan juga tidak berhak kepada apa-apa pampasan di bawah Akta. Perayu juga tidak membuat apa-apa bantahan di dalam Borang N. Oleh itu, permohonan perayu untuk campur tangan, yang dibuat lebih daripada empat tahun selepas pentadbir tanah telah merujuk kepada mahkamah bantahan pemilik-pemilik tanah terhadap award pampasan adalah tanpa apa-apa merit keseluruhannya (lihat perenggan 9).

(3) Permohonan perayu di bawah A 15 k 6 (2)(b) KMT untuk dijadikan pihak adalah tidak wajar. Ia menyebabkan salah guna proses mahkamah dan satu percubaan untuk memintasi peruntukan-peruntukan Akta yang jelas berkaitan cara dan keadaan-keadaan di mana 'persons interested' di bawah Akta untuk menyertai prosiding-prosiding sama ada di hadapan pentadbir tanah semasa siasatan atau, di mahkamah. Pemfailan Borang N adalah paling wajar dan satu-satunya cara yang terdapat di bawah Akta kepada mana-mana orang yang berminat di bawah Akta untuk menjadi pihak di dalam rujukan tanah di Mahkamah Tinggi berkaitan bantahan kepada jumlah pampasan (lihat perenggan 16).]

Notes:

For cases on application on intervention, see 2(2) *Mallal's Digest* (4th Ed, 2011 Reissue) paras 4089–4091.

For cases on acquisition of land, see 8(1) *Mallal's Digest* (4th Ed, 2011 Reissue) paras 2045–2323.

Cases referred to

Lembaga Lebuhraya Malaysia v Cahaya Baru Development Bhd [2010] 4 CLJ 419, CA (distd)

Sistem Penyuraian Trafik KL Barat Sdn Bhd v Kenny Heights Development Sdn Bhd & Anor [2009] 3 MLJ 809, CA (distd)

Singapore Para Rubber Estate Ltd v Pentadbir Tanah Daerah Rembau, Negeri Sembilan [2008] 6 MLJ 763, FC (refd)

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Legislation referred to

Land Acquisition Act 1960 ss 3, 12, 14, 37(1), 45(2), 47, Forms G, N
Rules of the High Court 1980 O 15 r 6(2)(b), (i)

Wong Kian Kheong (Wong Kian Kheong) for the appellant.
G Rajasingam (Jason Lai with him) (Shearn Delamore & Co) for the respondent in Civil Appeal No B-01(IM)-146 of 2009.
Yong Soon Ching (SC Yoong & Associates) for the respondent in Civil Appeal No B-01(IM)-245 of 2009.
Collin Sequerah (Dennis Khong with him) (Zain & Co) for the respondent in Civil Appeal No B-01-(IM)-83 of 2010.

KN Segara JCA (delivering judgment of the court):

[1] All three appeals were heard together before us, as the issue in all the three appeals centered on the application by the appellant made by three identical summons in chambers to intervene and be made a co-respondent in the respective three land reference cases at the High Court, Shah Alam.

[2] The proposed intervener in the three land reference cases is Sistem Lingkaran Lebuhraya Kajang Sdn Bhd ('SILK'). It is the concessionaire appointed by the Government of Malaysia to undertake the construction of Lebuhraya Penyuaraian Trafik Jalan Lingkaran Kajang ('SILK Highway') pursuant to a privatisation agreement dated 8 October 1997 and supplementary privatisation agreement dated 1 August 2001.

[3] Vide Selangor State Government Gazette No 1862 dated 24 October 2002 the 'scheduled lands' were acquired under the Land Acquisition Act 1960 ('LAA 1960') for the SILK Highway. Lembaga Lebuhraya Malaysia ('LLM') is the corporation or body on whose behalf the acquisition proceedings under s 3 of the LAA 1960 was undertaken by the state authority. There is no dispute that the lands which were acquired for the highway are now owned and vested in the name of LLM.

[4] The LAA 1960 is a special Act relating to the acquisition of land, the procedure for the assessment of compensation to be made on account of such acquisition and all matters incidental thereto, including the manner, procedure, and circumstances upon which any dissatisfied party to an award of compensation may pursue legal redress in the court. In view of it being a special Act we are unanimous that the statutory provisions therein must be strictly adhered to and made applicable to all relevant parties. All procedural steps leading for a final determination of any award shall be in accordance with the provisions of LAA 1960. This is clearly recognised in respect of ail proceedings in the court, as can be seen from s 45(2) of the LAA 1960 which reads:

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(2) *Save in so far as they may be inconsistent with anything contained in this Act*, the law for the time being in force relating to civil procedure shall apply to all proceedings before the Court under this Act.

(Emphasis added.)

[5] At the very outset we wish to express our unanimous view, based on the factual matrix relating to SILK's application in the summons in chambers, that O 15 r 6(2)(b)(i) of the Rules of the High Court 1980 ('RHC 1980') cannot be invoked because it refers to a situation where 'any person who ought to have been joined as a party or whose presence before the court is necessary to ensure that all matters in dispute in the cause or matter may be effectively and completely determined and adjudicated upon'. SILK most certainly does not fall within that category of person envisaged in O 15 r 6(2)(b)(i) of the RHC 1980. The following pertinent facts require emphasis:

(a) SILK is not disputing the award made by the land administrator;

(b) SILK did not file any objection in Form N with the land administrator under the provisions of the LAA 1960 with regard to the quantum of compensation awarded to the persons interested in the scheduled lands;

(c) SILK has not prayed in the summons in chambers, for leave under the provisions of the LAA 1960, to file Form N with the Land Administrator out of time;

(d) SILK did not evince any interest or attempt to participate at the enquiry under s 12 of the LAA 1960;

(e) SILK's admitted intention in wanting to intervene is to defend the award of compensation by the land administrator and not to oppose the award of compensation made by the land administrator.

[6] In the above circumstances, what are the 'matters in dispute' that may be effectively and completely determined and adjudicated upon' which necessitates SILK to be a party in the proceedings at the High Court? The answer, looked at objectively, must be 'NONE'. Incidentally, under the Third Schedule of the LAA 1960, 'proceeding' means a proceedings in respect of an objection under s 37. We are, therefore, unanimous that the High Court judge was correct in dismissing SILK's summons in chambers on the ground the application for leave to intervene was without merits.

[7] The LAA 1960 is a complete and comprehensive Act on the substantive law, procedure and forms. It ensures that no person would be deprived of his constitutional right to adequate and fair compensation without a proper inquiry, when deprived by the state of his property.

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[8] The respective owners of the scheduled land that was acquired for the SILK Highway were awarded in Form G under s 14 of the LAA 1960 compensation by the land administrator, upon the conclusion of the enquiry under s 12 of the LAA 1960.

12. Enquiry by the Land Administrator

(1) On the date appointed under section 10(1) the Land Administrator shall make full enquiry into the value of all scheduled lands and *shall* as soon as possible thereafter *assess* the amount of compensation which in his opinion is appropriate in each case, *according to* the consideration set out in the *First Schedule*;
Provided the Land Administrator *may obtain a written opinion* on the value of all scheduled lands *from a valuer* prior to making an award under section 14.

(2) The Land Administrator *shall also enquire* into the *respective interests* of all persons *claiming compensation* or who in *his opinion are entitled to compensation* in respect of the scheduled land and into the objections, if any, made by any interested person to the area of any scheduled land.

(3) The Land Administrator may for sufficient cause to be recorded by him in writing postpone any enquiry or adjourn any hearing of an enquiry from time to time.

(Emphasis added).

[9] SILK did not appear at the enquiry or request to be heard at the enquiry before the land administrator under s 12 of the LAA 1960, at any time prior to the making of an award by the land administrator under s 14. In any event, SILK's liability to pay the compensation arises out of the privatisation agreement, and not under the LAA 1960 either upon the assessment by the land administrator at the conclusion of the enquiry under s 12, or, at the conclusion of any proceeding in respect of an objection under s 37 in the court, by a determination under s 47 of the LAA 1960.

[10] It would become immediately obvious, upon reading s 12 carefully, and upon a further consideration of all the other provisions of the LAA 1960, that the primary concern of the LAA 1960 is to meet the interest of all the persons claiming compensation or are entitled to compensation (under the Act) for any scheduled land. It is further concerned only with the claims of any person interested in any scheduled land making objection to:

(a) the measurement of the land;

(b) the amount of the compensation;

(c) the persons to whom it is payable;

(d) the apportionment of the compensation.

(see s 37(1) of the LAA 1960)

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[11] Any objection made under s 37 shall be made by a written application in Form N to the land administrator requiring that he refer the matter to the court for its determination (see s 38(1)).

[12] Every application under s 38(1) shall be made within six weeks from the date of the land administrator's award under s 14 or within six weeks of the receipt of the notice from the land administrator under s 16 (see s 38(3)(a) and (b)). The prescribed period under sub-s (3)(a) and sub-s (3)(b) shall not be capable of enlargement by any court except in special circumstances. However, this discretion to enlarge time under s 38(4) is not absolute and unqualified. It has to be exercised sparingly, (see s 38(3) and (4); see also *Singapore Para Rubber Estate Ltd v Pentadbir Tanah Daerah Rembau, Negeri Sembilan* [2008] 6 MLJ 763).

[13] It is significant to note that SILK is neither making any claim to compensation nor is entitled to any compensation under the Act.

[14] SILK has also not made any objection in Form N to date vide:

(a) the measurement of the land;

(b) the amount of the compensation;

(c) the persons to whom it is payable;

(d) the apportionment of the compensation.

[15] In the above circumstances, SILK's application, by way of the summons in chambers to intervene, made more than four years after the land administrator had referred to the court the land owners' objection to the award of compensation is entirely bereft of any merits.

[16] In the overall scheme and context of the Land Acquisition Act, any application by the appellant under O 15 r 6(2)(b) of the RHC 1980 to be made a party, is inappropriate. It would amount to an abuse of the process of the court and an attempt to circumvent the clear and unambiguous provisions of the LAA 1960 as regards to the manner and circumstances in which 'persons interested' under the LAA 1960 are to participate in proceedings either before the land administrator at an enquiry or, in the court, upon a reference by the land administrator upon any objection to an award. Filing of Form N is the most appropriate and the only mode available under the LAA 1960 to any person interested under the LAA 1960 to become a party in a land reference at the High Court relating to an objection to the amount of compensation.

[17] The land reference proceedings in this case before the High Court is essentially an enquiry to determine the fair compensation payable to the owner

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of the land who is dissatisfied with the award of the land administrator as being low. Every opportunity was available to the appellant to have participated in the enquiry before the land administrator if it had asserted its rights to do so as being the eventual paymaster of any compensation awarded to the land owner. It is for the land administrator and/or his valuer, to file his valuation report at the land reference proceedings in the High Court pursuant to the Third Schedule to support his award. It is neither open nor desirable for the appellant to file any valuation report to support the award of the land administrator in the High Court. However, if the appellant had filed any valuation report in any enquiry before the land administrator the report would form part of the records before the High Court. Land reference proceedings should not be protracted and delayed in the High Court by unnecessary interlocutory proceedings such as the present application by the appellant to intervene. Land reference cases should be expeditiously disposed of in the High Court by strictly adhering to the evidence and procedure set out in the Third Schedule. *Sistem Penyuraian Trafik KL Barat Sdn Bhd v Kenny Heights Development Sdn Bhd & Anor* [2009] 3 MLJ 809 and *Lembaga Lebuhraya Malaysia v Cahaya Baru Development Bhd* [2010] 4 CLJ 419 can be easily distinguished on the facts vide to the present appellant's application in the High Court.

[18] We have no hesitation in dismissing these three appeals with costs fixed at RM10,000 to the first respondent in each of the appeals. Deposit to be paid out to each of the first respondent to account of costs.

Appeals dismissed with costs.

Reported by Kanesh Sundrum